IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9624 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUDHIRBHAI POPATBHAI TANK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9624 of 2002

MR SHAKEEL A QURESHI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/03/2003

ORAL JUDGEMENT

#. By filing this petition the petitioner-detenu has challenged the detention order dated 5.8.2002, by which,

he is detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "PASA") as a "dangerous person".

#. Along with the detention order, he was served with the grounds of detention of the same date. In the said grounds, there is a reference about two criminal cases, which are filed against the detenu under the Indian Penal Code. The detaining authority, after having been satisfied about illegal activities of the detenu, has passed the aforesaid detention order. The said detention order is challenged by the petitioner-detenu on various grounds.

#. At the time of hearing of this petition, learned advocate for the petitioner has relied upon the fact that the last offence against the petitioner was registered on 6.7.2002 and the detention order is passed on 5.8.2002. It is submitted that there is a delay of one month in passing the detention order. It is submitted that if really the activities of the petitioner are so dangerous, it was not necessary to wait for such a long time. In this connection, learned advocate for the petitioner has placed reliance upon the judgment of this Court (Coram: H.K.Rathod,J) given in Special Civil Application No.13125 of 2000 wherein this Court has considered the aspect of delay in passing the detention order. This Court in para 9 has observed as under :

> "In light of the observations made by this Court in two decisions and considering the facts that there was one month delay in passing the detention order from the last offence registered on 5th October, 2000 which remained unexplained and non-supply of the relevant documents which had been taken into account by the detaining authority while passing the detention order and in spite of the demand made by the petitioner, the same have not been supplied and therefore, it adversely affected the legal and fundamental rights of the detenu for making effective representation under Art.22(5) of the Constitution of India. Therefore, the order of detention dated 6th November, 2000 is required to be set aside."

#. Mr.Pancholi, learned AGP, however, tried to explain the delay and he also relied upon the affidavit-in-reply filed by the detaining authority. He argued that statements of witnesses were recorded on 5.5.2002 as well

as on 8.7.2002 and the detention order is passed subsequently on 5.8.2002. However, so far as recording of the statements of the witnesses is concerned, the same are merely referred in the detention order in order to cover up the gap of one month's delay in passing the detention order. In fact, after the last criminal case, it was not even necessary for the detaining authority to wait, as, normally the prevention detention order is required to be passed immediately, especially, when the appropriate material was available with the detaining authority.

#. In that view of the matter and considering the judgment referred to above, this petition is allowed. The order of detention dated 5.8.2002 is quashed and set aside. The detenu Sudhirbhai Popatbhai Tank is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)